



CTIA

Building The Wireless Future™
Cellular Telecommunications Industry Association

ORIGINAL

January 4, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

RECEIVED

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Re: Ex Parte Presentation
CC Docket No. 94-54
CC Docket No. 99-68**

EX PARTE OR LATE FILED

Dear Ms. Salas:

On December 12, 2000, the Cellular Telecommunications & Internet Association ("CTIA") represented hand delivered a letter to Chairman Kennard regarding the Commission's recent efforts to phase-out its existing reciprocal compensation mechanisms and move to a bill and keep compensation system. CTIA's position is outlined in the attached letter.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,


Dustun L. Ashton

No. of Copies rec'd 051
List ABCDE



CTIA

Cellular Telecommunications Industry Association

Thomas E. Wheeler

President, CEO

HAND DELIVERED

December 12, 2000

Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

Recent press reports indicate that the Commission intends to phase out the current reciprocal compensation structure over the next three years and move to bill and keep.¹ CTIA commends the Commission on this decision. With respect to CMRS, however, there is no reason to delay. The Commission has the authority to implement a bill and keep system for LEC-CMRS interconnection, and should do so immediately.

For over five years, CTIA has advocated a bill and keep system for LEC-CMRS interconnection compensation. CTIA's comments filed in the LEC-CMRS interconnection proceeding explained that Section 332 provides the Commission with the jurisdiction to adopt a comprehensive bill and keep compensation system for LEC-CMRS interconnection. In the 1996 Interconnection Order, the Commission instead adopted a reciprocal, symmetrical compensation scheme for all interconnection, including LEC-CMRS traffic.² However, the Commission did note this jurisdictional foundation.³ It explained that "section 332 in tandem with section 201 is

¹ Patrick Ross, *FCC Action Could Ring in Higher Net Fees*, CNET News.com, Dec. 5, 2000.

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("Interconnection Order").

³ Interconnection Order, ¶ 1023.



a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction.”⁴

In Iowa Utilities Board v. FCC, the Eighth Circuit defined the extent of the Commission’s jurisdiction. Specifically, the court concurred with CTIA’s analysis, and determined that the Commission indeed has exclusive and plenary jurisdiction to regulate LEC-CMRS interconnection under Section 332(c)(1)(B) of the Communications Act.⁵ The court noted that Section 332’s grant of authority over CMRS rate and entry regulation should be interpreted to encompass rates established between telecommunications carriers.⁶ Therefore, the court preserved the Interconnection Order’s “rules of special concern to CMRS providers,” making it clear that the Commission should preside over the rates charged by and charged to CMRS providers for interconnection.⁷

In both the 1996 Interconnection proceeding and the 1995 LEC-CMRS Interconnection proceeding, CMRS carriers overwhelmingly supported bill and keep as the most appropriate compensation mechanism for CMRS-LEC interconnection.⁸ As explained in those comments, bill and keep provides a greater incentive for all carriers to operate in a cost efficient manner because each carrier is responsible for recovering its own call termination costs. In determining whether bill and keep is the most appropriate compensation method for LEC-CMRS interconnection, the Commission should recognize that the relevant inquiry is whether the costs each carrier incurs to terminate traffic are balanced, not whether total traffic is balanced. As the record demonstrates, on an incremental cost basis, it is more expensive for wireless carriers to terminate calls than it is for wireline carriers. Moreover, since CTIA first raised this issue in 1995, wireless and wireline traffic flows have become increasingly balanced, making concerns over traffic flows less relevant. While the Commission decided not to mandate bill and keep in the Interconnection Order,⁹ it now apparently has concluded that, on balance, bill and keep should be required, even if implementing it causes significant dislocations.

⁴ Id.

⁵ Iowa Utils. Bd. v. FCC, 120 F. 3d 753, 800 n.21 (8th Cir. 1997); rev’d on other grounds sub. nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

⁶ Id.

⁷ To the extent the Commission is concerned that its authority to order bill and keep for LEC-CLEC interconnection is not clear, the court’s holding in Iowa Utilities makes clear that such concerns are not applicable to LEC-CMRS interconnection.

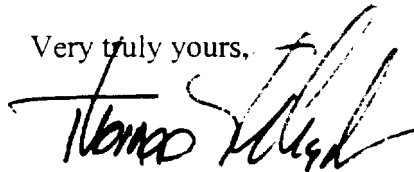
⁸ See Interconnection Order, ¶ 1108.

⁹ Interconnection Order, ¶¶ 1111-18.

Chairman Kennard
December 12, 2000
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In light of the fact that the Commission already has a record supporting bill and keep for LEC-CMRS interconnection, there is no need to phase-in such a system for LEC-CMRS traffic. Moreover, concerns that could justify a phase-in period for LEC-CLEC traffic do not apply to the CMRS industry.¹⁰ Finally, it appears that the ILECs, which originally opposed bill and keep, have reversed themselves and recognize the advantages of this pricing structure in the context of ISP interconnection. The Commission should take this opportunity to replace LEC-CMRS reciprocal, symmetrical compensation requirements with bill and keep as expeditiously as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas E. Wheeler", written over the closing "Very truly yours,".

Thomas E. Wheeler

cc: Commissioner Ness
Commissioner Powell
Commission Furchtgott-Roth
Commissioner Tristani
Thomas Sugrue

¹⁰ See Patrick Ross, *FCC Action Could Ring in Higher Net Fees*, CNET News.com, Dec. 5, 2000 (Kathryn Brown noted that CLEC carriers "cannot cut immediately" from reciprocal compensation to bill and keep because they rely heavily on the income from calls terminated for ISPs. Moving to bill and keep for LEC-CMRS traffic, however, will have no comparable impact on CLEC revenue.).